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SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
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E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

No. 854 70-21

October Term, 1970

SOCIALIST LABOR PARTY, et al.,
Appellants,

vs.

JAMES A. RHODES, et al.,
Appellees.

On Appeal From the United States District Court
For the Southern District of Ohio, Eastern Division

MOTION TO DISMISS
AND BRIEF IN SUPPORT THEREOF

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TABLE OF CONTENTS

	Page
Motion to Dismiss	1
Brief in Support of Motion to Dismiss	2
Conclusion	4

INDEX TO AUTHORITIES

	Page
Baggett v. *Bullitt*, 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964)	3
Gerende v. *Board of Supervisors*, 341 U.S. 56, 71 S. Ct. 565, 95 L. Ed. 745 (1951)	3
State ex rel. Beck v. *Hummel*, 150 Ohio St. 127 (1948)	3
Section 3517.07, Revised Code of Ohio	2

IN THE

Supreme Court of the United States

October Term, 1970

No. 814

SOCIALIST LABOR PARTY, et al.,
Appellants,

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JAMES A. RHODES, et al.,
Appellees.

On Appeal From the United States District Court For the Southern District of Ohio, Eastern Division

MOTION TO DISMISS

Now come Appellees, through Paul W. Brown, Attorney General, and move the Court to dismiss this appeal on the basis that it presents no constitutional question.

PAUL W. BROWN
Attnorey General

ROBERT D. MACKLIN
Chief Counsel

Attorneys for Appellees.

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No. 814

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SOCIALIST LABOR PARTY, et al.,
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Appellees.

On Appeal From the United States District Court For the Southern District of Ohio, Eastern Division

BRIEF IN SUPPORT OF MOTION TO DISMISS

At issue in this appeal is the following pertinent part of Section 3517.07, Ohio Revised Code:

> "Any party or group desiring to have a place on the ballot shall file with the Secretary of State and with the board of elections in each county in which it desires to have a place on the ballot an affidavit * * * under oath stating that it does not advocate, either directly or indirectly, the overthrow, by force or violence, of our local, state or national government; that it does not carry on any program of sedition or treason by radio, speech or press; that it has no connection with any foreign government or power; that it has no connection with any group or organization so connected or so advocating, either

directly or indirectly, the overthrow, by force or violence, of our local, state or national government or so carrying on a program of sedition or treason by radio, speech, or press.

"* * * * * * * * *

"This section does not apply to any political party or group which has had a place on the ballot in each national and gubernatorial election since the year 1900."

The District Court held that this statute is overly broad on its face in that it attempts to prohibit mere advocacy. However, in reliance on *State ex rel. Beck* v. *Hummel,* 150 Ohio St. 127 (1948), which construed the section narrowly, the Court held that, as so construed, the statute is constitutional, and requires an oath that (1) the party is not engaged in an attempt to overthrow the government by force or violence, (2) the party does not carry on a program of sedition or treason as defined by the criminal law and (3) the party is not knowingly associated with a group attempting to overthrow the government by force or violence.

This Court has upheld oath requirements for candidates for elective office. *Gerende* v. *Board of Supervisors,* 341 U.S. 56, 71 S. Ct. 565, 95 L. Ed. 745 (1951). This case, as the District Court noted, has been cited with approval by this Court on several occasions. Further, the Court has indicated that it will accept the construction given to a state loyalty oath statute by the highest state court. *Baggett* v. *Bullitt,* 377 U.S. 360, 84 S. Ct. 1316, 12 L.Ed. 2d 377 (1964). Since the *Hummel* case, *supra,* clearly distinguished between mere advocacy and attempt, which is the dividing line in judging the validity of loyalty oaths, it follows that the Supreme Court of Ohio has given the statute a constitutional interpretation,

which this Court can accept. It further follows that this appeal does not present a constitutional question.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed.

Respectfully submitted,

PAUL W. BROWN
Attorney General

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Columbus, Ohio 43215

Attorneys for Appellees.